

Service Date: December 18, 2013

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of)	REGULATORY DIVISION
NorthWestern Energy for Approval to Purchase)	
and Operate the Hydroelectric Facilities of PPL)	DOCKET NO. D2013.12.85
Montana, LLC, to Include Generation Assets)	ORDER NO. 7323
Cost of Service in Electricity Supply Rates, to)	
Issue Securities to Complete the Purchase, and)	
for Related Relief)	

PROTECTIVE ORDER

PROCEDURAL HISTORY

1. On October 11, 2013, NorthWestern Corporation doing business as NorthWestern Energy (NorthWestern) notified the Montana Public Service Commission (Commission) that by December 24, 2013, it intends to file an application seeking preapproval to purchase eleven hydroelectric generating facilities, one storage reservoir, and related assets (Hydro Assets) owned by PPL Montana, LLC. *See* Dkt. N2013.10.74.

2. On December 3, 2013, NorthWestern filed a *Motion for Protective Order and Brief in Support of the Hydroelectric Generating Facilities' Critical Energy Infrastructure Information* (Motion). On December 5, 2013, the Commission published notice of the Motion in its weekly agenda.

FINDINGS OF FACT

3. In its Motion, NorthWestern seeks to protect certain “Critical Energy Infrastructure Information” (CEII) related to the Hydro Assets, specifically:

- Portions of the annual safety inspections and reports performed on the [Hydro Assets] by FERC as well as portions of those safety reports performed pursuant to Section 18, Part 12 of the Federal Power Act;
- portions of the Emergency Action Plans for the [Hydro Assets]; and

- any and all other CEII for the [Hydro Assets] that might be sought by the Commission or a party in the docket, or that is needed to support NorthWestern's rebuttal testimony, if any.

Mot. at p. 4. NorthWestern had to sign a non-disclosure agreement in order to receive this information. Aff. William T. Rhoads ¶ 6 (Dec. 3, 2013).

4. In its Motion, NorthWestern argues that the Commission should protect this information due to “the nature of CEII and the protection given to it” by the Federal Energy Regulatory Commission (FERC), and to “not put Montana citizens in harm’s way.” Mot. at p. 5.

CONCLUSIONS OF LAW

5. The Montana Constitution imposes an affirmative duty on the Commission to make all of its records and proceedings available to public scrutiny. Mont. Const. art. II, §§ 8-9. The Commission may issue a protective order, however, “when necessary to preserve . . . information that must be protected under law, as required to carry out its regulatory functions.” Mont. Code Ann. § 69-3-105(2) (2013).

6. A motion for protective order must make clear the basis for the request, and make a *prima facie* showing of confidentiality. Admin. R. Mont. 38.2.5007 (2013). NorthWestern may seek protection of information it determines is “legally protectible.” *Id.* “If there are bases for confidential information other than individual privacy or trade secret, requests for protection must explain, and demonstrate compliance with, the legal standards required for protection.” *Id.*

7. FERC defines CEII as

specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure.

18 C.F.R. § 388.113(c) (2013) (defining “critical infrastructure” as systems and assets, “the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.”).

8. FERC limits “the use and disclosure” of CEII, and generally requires a “requester” of this information to execute a non-disclosure agreement. *Id.* at § 388.113(d)

(requiring most requesters to demonstrate a “valid or legitimate need” for the information). To allow disclosure of CEII at the state level would circumvent FERC regulations.

9. The Commission has previously protected information “in the interests of public safety as confidential critical infrastructure security information. . . .” Or. 6670a p. 2 (Feb. 28, 2006).

10. NorthWestern has shown that CEII “must be protected under law” and has made a *prima facie* showing of the confidentiality of the CEII related to the Hydro Assets. *Supra* ¶¶ 3-4, 7-9.

ORDER

IT IS HEREBY ORDERED THAT:

11. NorthWestern’s Motion is granted; and
12. Information submitted in accordance with this Protective Order be treated as confidential pursuant to Title 38, Subchapter 50 of the Administrative Rules of Montana.

DONE AND DATED this 17th day of December, 2013 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

W. A. GALLAGHER, Chairman

BOB LAKE, Vice Chairman

KIRK BUSHMAN, Commissioner

TRAVIS KAVULLA, Commissioner

ROGER KOOPMAN, Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)

Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket No. D2013.12.85, Order No. 7323

Order Action Date: December 17, 2013

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented